

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
The Pay Telephone Reclassification and)	CC Docket No. 96-128
Compensation Provisions of the)	
Telecommunications Act of 1996)	

PETITION FOR WAIVER

Pursuant to Section 1.3 of the Federal Communications Commission's ("Commission") rules, Cincinnati Bell Any Distance Inc. ("CBAD")¹ hereby submits this Petition for Waiver of Section 64.1320(b) of the Commission's rules, 47 CFR §64.1320(b). Specifically, CBAD requests that it be allowed to file its initial System Audit Report on April 1, 2005. As explained below, there is good cause for granting this Petition, and the Petition is in the public interest.

On October 3, 2003, the Commission issued a Report and Order and adopted new payphone compensation rules.² Under the provisions of the Payphone Order, which was effective July 1, 2004, long distance carriers or switch-based resellers that complete a coinless access code or subscriber toll-free payphone call must compensate the payphone service provider for the call as specified in Section 64.1310 of the rules.³ Pursuant to Section 64.1320, a Completing Carrier is required to undergo a system audit of its call tracking system by an independent third-party auditor and file the audit report with the Commission and each payphone service provider for which it completes calls by the

¹ CBAD is a facilities-based long distance provider serving customers throughout the continental United States. Prior to June 11, 2004, CBAD was a switchless reseller of long distance service.

² See, *The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, 18 FCC Rcd 19975 (2003) ("Payphone Order").

³ CFR §64.1300 terms such long distance carriers or switch-based resellers as "Completing Carriers." The Payphone Order refers to these Completing Carriers as switch-based resellers or SBRs (Payphone Order at fn. 1).

effective date of the rules (July 1, 2004). In addition, the auditor is to attest to the Completing Carrier's compliance with Section 64.1310(a)(1) as of the date of the audit. The Payphone Order further explains that the auditor should attest to the Completing Carrier's compliance during the previous year and that "the initial audit report should be based on the SBR's compliance from the date that the tracking system is implemented and deployed through the date of the audit."⁴ Thereafter, a Completing Carrier is to engage an independent third-party auditor to verify whether any material changes have occurred since the prior year's audit report and, if so, to verify that the changes do not affect the carrier's compliance with the rules.⁵

CBAD did not become a switch-based provider of long distance service until June 11, 2004. Because CBAD did not have a switch until two weeks prior to the date the report was due, it would have been impossible for an auditor to prepare a System Audit Report for CBAD for submission by July 1, 2004. In other words, an auditor could not attest to whether CBAD had the proper systems in place to track payphone calls to completion for a period of time during which CBAD did not have a switch. As a result, CBAD interpreted the Payphone Order and Commission's rules to imply that it should submit an initial System Audit Report on July 1, 2005, for the previous calendar year and sought to have a contract with an independent third-party auditor in place by early 2005. CBAD reasoned that if an audit were begun during the first quarter of 2005, CBAD's switch and tracking system would have been in place for over six months, thus providing the auditors a reasonable time-period over which to perform the audit and sufficient data to do testing.

⁴ Payphone Order at ¶ 41, fn. 114.

⁵ *Id.* at ¶ 42, also see CFR 64.1320(f)

On October 22, 2004, the Commission released its Order on Reconsideration.⁶ In the Reconsideration Order the Commission indicates that a Completing Carrier is required to file its audit report on the first day of the quarter in which the carrier will be using its own tracking system.⁷ As explained above, since CBAD had no switch (and therefore, nothing to track) until two weeks prior to the July 1, 2004 filing date, it would have been impossible for it to submit an audit report on July 1, 2004. CBAD believes that it may be uniquely situated with respect to the timing of the effective date of the Commission's rules and the deployment of its switch. For this reason, CBT also believes that the Commission may not have anticipated such a scenario. The Payphone Order and Reconsideration Order address the situation of a SBR that does not have a tracking system in place contracting with an intermediate carrier to pay compensation on its behalf until the SBR can install its own tracking system.⁸ However, this solution does not address CBAD's situation. As the facilities-based long distance carrier completing payphone calls, there is no intermediate carrier with whom CBAD can contract to pay compensation on its behalf. Therefore, CBAD had no option but to implement its own payphone call tracking system.

CBAD submits that the unique circumstances surrounding the timing of the audit requirements and the deployment of its switch constitute good cause for granting this Petition. In addition, granting the Petition is in the public interest because an audit based on a period of time prior to the deployment of CBAD's switch, if possible, (CBAD contends it was not) would have been entirely meaningless—such an audit would not

⁶ *The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Order on Reconsideration, FCC 04-251, (rel. October 22, 2004) ("Reconsideration Order").

⁷ Reconsideration Order at ¶ 16.

⁸ Payphone Order at ¶ 48; Reconsideration Order at ¶ 16.

have provided assurance that payphone providers were being properly compensated by CBAD for the period beginning July 1, 2004. An audit submitted on April 1, 2005, on the other hand, will enable the auditor to test six months of actual data and will guarantee that payphone providers are being properly compensated by CBAD.

Furthermore, CBAD submits that no parties will be harmed if the Commission grants CBAD's Petition for Waiver. Although CBAD's System Audit Report has not yet been completed, CBAD does have a payphone call tracking system in place and has been tracking such calls to completion since July 1, 2004. CBAD has also contracted with the National Payphone Clearinghouse ("NPC") to process its payphone compensation payments to payphone service providers. The payments for payphone calls made during the third quarter of 2004 will be distributed by the NPC on CBAD's behalf in early January 2005. While CBAD believes that its system is appropriately tracking all completed payphone calls, CBAD will correct any payment shortages if the system audit finds any deficiencies in the payphone tracking system that would have resulted in an incorrect payment to any payphone service provider. If such errors are found, CBAD will submit corrected call completion data to the NPC and compensate the payphone providers for any underpayment, including interest from the date that the payment was initially due.

Because CBAD did not believe that it was required to file its initial System Audit Report until July 1, 2005, CBAD has not yet engaged an auditor. However, upon learning of the Commission's clarification in the Reconsideration Order, CBAD has redoubled its efforts to contract with an outside auditor to prepare a System Audit Report as soon as possible. Based upon these efforts, CBAD expects to select an auditor by mid-

December and anticipates that the audit will take approximately twelve weeks to complete. Under this expedited schedule, it should be possible for CBAD to file its initial audit report on April 1, 2005. Thereafter, CBAD would file its annual System Audit Report on April 1 of each year.

As explained above, CBAD is uniquely situated as it relates to the coincidence of the initial System Audit Report filing requirements and the deployment of its switch. Granting CBAD's Petition to permit it to file its initial System Audit Report on April 1, 2005 is in the public interest because it will provide a more meaningful audit. Moreover, no parties will be harmed if this Petition is granted. For the foregoing reasons, CBAD respectfully requests a waiver of the Commission's rules to allow it to file its initial System Audit Report with the Commission and payphone service providers on April 1, 2005, and requests a waiver of any late filing penalty.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition for Waiver of Cincinnati Bell Any Distance was sent via electronic mail, to the following parties this 22nd day of November 2004.

/s/ Patricia L. Rupich
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